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JUN 26 2014

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UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

ROBERT F. ALDAVA,

Debtor(s).

Case No.: 2:13-bk-39164-NB

CHAPTER 13

**MEMORANDUM DECISION GRANTING
MOTION TO AVOID JUNIOR LIEN**

Date: April 17, 2014

Time: 2:00 p.m.

Courtroom: 1545

At the above-captioned time and place, a hearing was held on the debtor's motion to avoid a junior lien (the "Motion", dkt. 20) held by Aerospace Federal Credit Union (the "Junior Lienholder") that is secured by the debtor's principal residence located at 951 N. Gardner St. Unit # 1, West Hollywood, CA 90046 (the "Property"). By agreement of the parties, the matter was taken under submission for a final ruling based on the written record without oral testimony, including both parties' appraisals and accompanying documents (dkt. 20, 25, 26) and an appraisal performed by an independent third party appraiser (the "Third Party Appraiser") who also provided independent analysis of the parties' competing appraisals (dkt. 27, 28).

(1) Background. A chapter 13 plan can "modify the rights of holders of secured claims, *other than* a claim secured only by a security interest in real property

1 that is the debtor's principal residence." 11 U.S.C. § 1322(b)(2) (emphasis added). A
2 claim is not a "secured claim" for bankruptcy purposes, however, if the subject lien is
3 entirely underwater. *In re Zimmer*, 313 F.3d 1220 (9th Cir. 2002); *In re Lam*, 211 B.R.
4 36 (9th Cir. BAP 1997). Therefore the key issue is whether or not (a) the aggregate
5 dollar amount owed on senior liens exceeds (b) the value of the Property as of the
6 relevant date. The parties have not briefed what date is relevant. I will use the date on
7 which the bankruptcy petition was filed (the "Petition Date"), which in this case was
8 December 11, 2013, based on the reasoning set forth in a tentative decision in another
9 case. *In re Gutierrez* (Case No. 2:12-bk-49133-NB, dkt. 37).

10 (2) Senior Liens. The Motion asserts that the dollar amount owed on the
11 senior lien against the Property was \$297,273.57 according to a mortgage statement
12 provided by the senior lienholder (dkt. 20 Ex. D). The Junior Lienholder asserts that the
13 amount owed on the senior lien was slightly less, \$295,373.08, relying on the senior
14 lienholder's value provided in the proof of claim (dkt. 25, Ex. 2). Based on my valuation
15 of the property below, this differential is not determinative.

16 (3) Competing Appraisals. The debtor's appraiser values the Property at
17 **\$290,000.00** as of January 19, 2014 (dkt. 20). The Junior Lienholder's appraisal values
18 the Property at **\$338,000.00** as of March 24, 2014 (dkt. 25, Ex. 3). The Third Party
19 Appraiser values the Property at **\$305,000.00** as of December 11, 2013 (the Petition
20 Date) (dkt. 27, Ex. 3). These appraisals rely on sales or listings of properties that they
21 assert are comparable ("Comps"), and adjust the prices of those Comps to arrive at a
22 value for the Property.

23 (4) Sale Date of Comps. Sale dates close to the valuation date generally are
24 preferable (in a market that may be rising or falling). The debtor's appraiser relies on
25 four Comps close to the Petition Date and one Comp (number 2) from May 8, 2013,
26 making that Comp somewhat less reliable, but that Comp was appears to have been
27 included more for completeness, because it was a sale in the same condominium
28 building, than because of any other comparability, so it is of limited utility. The Junior

1 Lienholder relies on Comps having sale dates between September 2013 and March of
2 2014, which are all close to the Petition Date, and although conceivably prices may
3 have begun to rise with Spring by the latter date that does not appear to be a significant
4 factor. The Third Party Appraiser relies on Comps from before the date of valuation.
5 On balance, this consideration favors no appraisal over another and is neutral.

6 (5) Sale Type of Comps. Actual sales are superior to listings, and arms-
7 length non-distressed sales are preferable to the alternatives, such as “short” sales.
8 The debtor’s appraiser relies on three arms-length conventional sales, one “pending
9 sale,” and one conventional/REO sale. The Junior Lienholder’s appraiser relies on four
10 arms-length sales and one “listing.” I find the reliability of these prospective sales
11 questionable, but the Junior Lienholder appears to make a reasonable adjustment for
12 this reliance and the Third Party Appraiser notes that the listing later closed at a price
13 very close to the Junior Lienholder’s valuation, while the pending sale relied upon by the
14 debtor’s appraisal later closed at a price approximately \$35,000 higher than initially
15 reported. The Third Party Appraiser relies on four arms-length transactions and one
16 short sale. On balance this consideration weighs slightly against the debtor’s appraisal.

17 (6) Proximity and Precise Location of Comps. Usually the Comps that are
18 closest to the Property are the best indicators of value; and it is also important to
19 consider the characteristics of the precise location, such as whether the Property is
20 adjacent to undesirable properties or features, or within a particular school district. The
21 debtor’s appraiser relies on Comps that are located in generally the same area as the
22 Property, with all of the debtor’s Comps within less than a mile of the Property. Four of
23 the five Comps relied on by the Junior Lienholder’s appraiser are over a mile away—
24 significantly farther from the Property. Importantly, four of the Junior Lienholder’s
25 Comps are to the west of the Property in the East Crescent Heights Boulevard
26 neighborhood of Los Angeles. This area, according to the Third Party Appraiser, is
27 “considered to offer superior location and appeal when compared to the [Property].”
28 See dkt. 28. This is very likely to have inaccurately increased the Junior Lienholder’s

1 valuation. The Third Party Appraiser relies on Comps that are in close proximity to the
2 Property (similar to the Debtor's Comps).

3 Importantly, the debtor's Comp 1 and the Third Party Appraiser Comp 3 are the
4 same property, 1435 N. Fairfax Ave., Unit # 6, West Hollywood, CA 90046. The Third
5 Party appraiser adjusts the value of this property down \$15,000 because it is next to a
6 "BsyRd." Dkt. 27, Comp 3. However, the debtor's appraiser makes no such adjustment
7 because "[a]lthough this complex [the complex with debtor's Comp 1 and the Third Party
8 Appraiser's Comp 3] is located on a traffic street, the unit is located at the rear of the
9 building according to public records plat map and traffic noise is not close to the unit."
10 Dkt. 20, Ex. A, Comment Addendum. While the debtor's Comps and the Third Party
11 Appraiser's Comps are similar, the debtor's written appraisal is more persuasive on this
12 issue because of this greater detail, clarifying the location of debtor's Comp 1 at the
13 back of the building on an otherwise busy street. I find this consideration particularly
14 compelling giving the magnitude of the adjustment made by the Third Party Appraiser.

15 Based on the foregoing considerations, the proximity and precise location of the
16 Comps weighs heavily in favor of the debtor's appraisal.

17 (7) Condition of the Comps relative to the Property. The condition of Comps
18 can be difficult to determine without a physical inspection, and the condition of any
19 property is somewhat subjective and difficult to quantify, but on the present record the
20 following observations apply to the relative conditions of the Comps and the Property.
21 According to the debtor's appraiser, the Property and the relied-on Comps are all of
22 "average" quality. According to the Junior Lienholder's appraiser, the Property is of "C4"
23 quality, but only one of the Junior Lienholder's Comps is of the same C4 quality. The
24 remaining four Comps are of a "C3" quality. Additionally, the Junior Lienholder's Comps
25 have amenities not found at the Property: three of them have a pool and one has a gym.
26 The Third Party Appraiser also defines the condition of the Property as C4. Three of the
27 Third Party Appraiser's Comps are in the same, C4, condition as the Property. The
28 remaining two are in C3 condition, but the Third Party Appraiser makes a reasonable

1 adjustment for this difference.

2 On balance, this consideration weighs very slightly against the Junior
3 Lienholder's appraisal and is equal as between the appraisals by the debtor and the
4 Third Party Appraiser.

5 (8) Appraiser's Experience/ Credibility. The Junior Lienholder's appraiser
6 includes a resume setting forth his twenty years of experience and qualifications. Dkt.
7 25, appraiser's decl. ex. 2. The Third Party Appraiser does not include a resume.
8 While the debtor's appraiser does not include a resume, I find the analysis attached in
9 her comment addendum very credible, careful, and well reasoned. Dkt. 20, Ex. A,
10 Comment Addendum. She provides a thorough summary of the differences between
11 the Property and her selected Comps, explains why some features are given more
12 weight than others, and details her reasons for price adjustments. See *id.* Neither the
13 Junior Lienholder's appraiser nor the Third Party Appraiser includes this degree of detail
14 in their written appraisals and analysis. On balance, this weighs in favor of the debtor's
15 appraisal.

16 (9) Adjustments for Bed and Bath Counts and Interior Square Footage.
17 Appraisals traditionally adjust Comps for bed and bath counts, or square footage, or
18 some combination of those things, and any one of those methods is acceptable.

19 a. Gross Living Area ("GLA") and Configuration of Property. All three
20 appraisers rely on Comps with similar GLAs to the Property and all rely
21 on Comps that have three bedrooms and one bath, the same as the
22 Property. All three appraisals also use a nearly identical number for
23 square footage of the subject property. This consideration is neutral. .

24 b. Magnitude of Adjustments. While large adjustments certainly may be
25 appropriate to account for large differences, they also tend to reflect
26 that the comparable sales are not truly comparable, and large
27 adjustments can magnify any inaccuracies in weighing the importance
28 of a given characteristic of a comparable sale. The adjustments made

1 by the debtor's appraiser are all within a normal range. The largest
2 adjustment is debtor's Comp 2, at \$26,000 or 13%, which is large
3 enough that conceivably it could be more prone to error than
4 adjustments in a smaller percentage, but that consideration is
5 insignificant. The adjustments made by the Junior Lienholder's
6 appraiser are relatively small, but some relevant differences between
7 the Comps and the Property seem unaccounted for. For example, the
8 Junior Lienholder's appraiser makes no adjustment for a nearly 200
9 square foot deficiency in Comp # 3. The Third Party Appraiser's
10 adjustments are all seemingly reasonable, given the differences in the
11 Comps. On balance, this consideration weighs against the Junior
12 Lienholder's appraisal and is roughly neutral as between the other two
13 appraisals.


14 (10) Valuation Decision. Taking into consideration all of the record presented,
15 and in particular the matters noted above, especially the careful analysis supporting the
16 debtor's valuation, I find that as of the relevant date the Property had a value of
17 **\$295,000.00**. This valuation was made without in any way taking into account the
18 dollar amount owed on the senior lien, but as it happens this is extremely close to, and
19 slightly below, that dollar amount.

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1 (11) Conclusion. Based on the foregoing findings of fact and conclusions of
2 law, it turns out that the Property is worth just barely less than the asserted dollar
3 amount of the senior lien as of just prior to the Petition Date, and therefore it appears on
4 the present record that the Motion must be GRANTED. Pursuant to LBR 9021-
5 1(b)(1)(B), the debtor is directed within 7 days to serve and lodge via LOU a proposed
6 order adopting that ruling "for the reasons stated" in this memorandum decision.

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24 Date: June 26, 2014


Neil W. Bason
United States Bankruptcy Judge